



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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CST

Paper No. 21

In re application of :
John O. Bieser et al :
Serial No. 09/032,893 :
Filed: February 27, 1998 :
For: HOMOGENEOUSLY BRANCHED ETHYLENE :
POLYMER CARPET, CARPET BACKING :
AND METHOD FOR MAKING SAME :

DECISION ON
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed August 15, 2001. Petitioner requests that the abandonment, as set forth in the Notice of Abandonment of July 17, 2001, be withdrawn, as applicants have filed a Reply to the Notice of Improper Request for Continued Examination within a one-month time period.

A non-final Office action was mailed on November 30, 2000. Six months later, on May 30, 2001, a Continued Prosecution Application (CPA) request was submitted. In response to this request, a Notice of Improper Request for Continued Examination (RCE) was mailed on June 28, 2001. The Notice of Improper RCE specifically stated "If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action." A Notice of Abandonment was mailed on July 17, 2001. On July 25, 2001, a Reply to Notice of Improper Request for Continued Examination (RCE) was submitted by applicants.

DECISION

A careful review of the application record shows that the CPA request was filed six months after the non-final Office action of November 30, 2000. As a CPA may only be filed based upon prior nonprovisional applications filed before May 29, 2001, and the prior application had a filing date of October 23, 2000, the CPA request was treated as improper. Thus, the request for CPA was treated as a Request for Continued Examination. The RCE, however, was treated as improper because the request was not accompanied by a proper submission. Again, the Notice of Improper RCE stated "If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action." Accordingly, applicant had until

May 30, 2001 to file a reply to the Office action of November 30, 2000. Therefore, at the time of mailing of the Notice of Improper Request for Continued Examination (RCE), the present application was abandoned.

The petitioner takes the position that under MPEP 714.03, the examiner should have given applicants one month to complete a reply to the Notice of Improper Request for Continued Examination. 37 CFR 1.114(c), however, requires that the reply which accompanies the RCE be provided within the time period set forth in the last Office action. Thus, the Reply to Notice of Improper Request for Continued Examination submitted by applicants on July 25, 2001 was not timely filed, as the reply was due on May 30, 2000.

The petition is **DENIED**.

Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive the abandoned application.



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